

FCC MAIL SECTION

OCT 2 10 02 AM '96 Federal Communications Commission

DA 96-1461

DISCUSSION

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Wilson Creek, Washington,
and Pendleton, Oregon)**

MM Docket No. 95-163
RM-8715

REPORT AND ORDER
(Proceeding Terminated)

Adopted: August 30, 1996;

Released: September 25, 1996

By the Chief, Allocations Branch:

1. At the request of Wilson Creek Communications, LLC ("petitioner"), licensee of Station KVYF(FM), Channel 277C3, Wilson Creek, Washington, the Commission has before it the Notice of Proposed Rule Making and Order to Show Cause, 10 FCC Red 12011 (1995), proposing the substitution of Channel 278C1 for Channel 277C3 at Wilson Creek, Washington, and the modification of Station KVYF(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 279C1 for Channel 278C1 at Pendleton, Oregon, and the modification of Station KWHT(FM)'s license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Agpal Broadcasting, Inc. ("Agpal") filed informal opposing comments in response to the Order to Show Cause.¹ Petitioner filed reply comments.²

¹ Agpal's comments were received in the Policy and Rules Division on December 8, 1996. Although the comments were received before the close of the comment period, Agpal failed to file an original and four copies with the Secretary of the Commission, also failed to serve a copy of its comments on the petitioner, and did not provide a certificate of service as required by Section 1.420(a), (b), (c) and (e) of the Commission's Rules, and paragraph 4 of the Appendix to the Notice. However, we will accept and consider Agpal's pleading in order to resolve this proceeding on the basis of a complete record.

2. We believe the public interest would be served by substituting Channel 278C1 for Channel 277C3 at Wilson Creek, Washington, since it would enable Station KVYF(FM) to expand its FM coverage area. To accommodate the upgrade, we also substitute Channel 279C1 for Channel 278C1 at Pendleton, Oregon. An engineering analysis has determined that Channel 278C1 can be allotted at Wilson Creek in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) south to avoid a short-spacing to the proposed allotment site for Channel 279B, Rock Creek, British Columbia.³ Additionally, Channel 279C1 can be allotted to Pendleton, Oregon, in compliance with the Commission's minimum distance separation requirements at Station KWHT(FM)'s presently licensed site.⁴ Since the Wilson Creek is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. In accordance with Section 1.420(g)(3) of the Commission's Rules, we also modify Station KVYF(FM)'s license to specify operation on Channel 278C1 at Wilson Creek, Washington, and modify Station KWHT(FM)'s license to specify operation on Channel 279C1 at Pendleton, Oregon.

3. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefiting party, or parties, to reimburse the affected station for costs incurred. We acknowledge Agpal's opposition to the channel change at Pendleton citing its concerns "due to the tremendous expense and hardship" the frequency change would cause to Station KWHT(FM). However, petitioner has stated its willingness to reimburse Agpal for reasonable costs associated with Station KWHT(FM) moving to Channel 279C1. Therefore, the parties are expected to negotiate in good faith pursuant to Circleville, Ohio, 8 FCC 2d 159 (1967), with the intercession of the Commission only in the event an agreement cannot be reached.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 12, 1996, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

²Petitioner stated in its reply comments that it had not been served with any comments, and as of January 29, 1996, found none but its own in the official record, thereby assuming that the proposal was unopposed, and resting on its initial comments that the upgrade would be in the public interest.

³The coordinates for Channel 278C1 at Wilson Creek are North Latitude 47-24-49 and West Longitude 119-07-15.

⁴The coordinates for Channel 279C1 at Pendleton are North Latitude 45-47-51 and West Longitude 118-22-17.

<u>City</u>	<u>Channel No.</u>
Wilson Creek, Washington	278C1
Pendleton, Oregon	279C1, 299C1

5. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Wilson Creek Communications, LLC, for Station KVYF(FM), Wilson Creek, Washington, IS MODIFIED to specify operation on Channel 278C1 in lieu of Channel 277C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Wilson Creek Communications, LLC, licensee of Station KVYF(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Agpal Broadcasting, Inc., for Station KWHT(FM), Pendleton, Oregon, IS MODIFIED to specify operation on Channel 279C1 in lieu of Channel 278C1, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KWHT(FM)'s license, BLH-840530BY, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior

authorization pursuant to an application for construction permit (FCC Form 301), specifying the new facility.

- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities in all respects with license BLH-840530BY, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Wilson Creek Communications, LLC
170 Crescent Avenue
Wyckoff, New Jersey 07481
(Licensee of Station KVYF(FM))

Agpal Broadcasting, Inc.
P.O. Box 640
Pendleton, Oregon 97801
(Licensee of Station KWHT(FM))

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau